

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

<b>NED COMER, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Civil Action No. 1:11CV220 LG-RHW</b>
<b>v.</b>	)	
	)	
<b>MURPHY OIL, U.S.A., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION OF COAL COMPANY DEFENDANTS TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM**

Defendants Alpha Natural Resources, Inc.; Arch Coal, Inc.; CONSOL Energy Inc.; International Coal Group, Inc.; Massey Energy Company<sup>1</sup>; The North American Coal Corporation; Ohio Valley Coal Company; Peabody Energy Corporation; Rio Tinto Energy America, Inc.; and Westmoreland Coal Company (“Coal Companies”) hereby move to dismiss with prejudice plaintiffs’ Amended Class Action Complaint (“Complaint”) pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons set forth in the accompanying Memorandum of Authorities and exhibits, the Court lacks subject matter jurisdiction over plaintiffs’ claims. This case is barred by the doctrines of res judicata and collateral estoppel and improperly calls for the adjudication of a political question. Moreover, plaintiffs lack standing under Article III of the U.S. Constitution, and plaintiffs’ claims are preempted by federal law because they conflict with the regulatory approach taken by Congress. Plaintiffs’ claims should also be dismissed because they are barred by the applicable statutes of limitations, and because plaintiffs have failed to state a claim for relief as a matter of law.

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<sup>1</sup> Massey Energy Company is now known as Alpha Appalachia Holdings, Inc.

For these reasons, the Coal Companies respectfully request that plaintiffs' Complaint be dismissed with prejudice as to them.

Dated: October 14, 2011

Respectfully submitted,

s/ Kathleen Taylor Sooy

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ATTORNEYS FOR ALPHA NATURAL  
RESOURCES, INC.; ARCH COAL, INC.,  
CONSOL ENERGY INC.; INTERNATIONAL  
COAL GROUP, INC.; MASSEY ENERGY  
COMPANY; THE NORTH AMERICAN COAL  
CORP.; OHIO VALLEY COAL CO.; PEABODY  
ENERGY CORPORATION; RIO TINTO  
ENERGY AMERICA, INC.; AND  
WESTMORELAND COAL COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14th, 2011, I electronically filed the foregoing with the clerk of the Court using the ECF/CM system, which automatically sent notification of such filing to all parties who have appeared in this case.

s/ Kathleen Taylor Sooy

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